IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE THIRTY FIRST DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE M.H.S. ANSARI

AND
THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

WRIT PETITION Nos. 22734 and 22735 of 1996 and 3355 of 2001

W.P.No.22734 of 1996

Between:

Share Mediacl Care, a Society registered under

the A.P. Societies Registration Act, rep. by its Secretary,

Manik Arke, Administration Office at 5-9-22, Sarovar
Secretariat Road, Hyderabad.

..... PETITIONER

AND

1 Union of India, rep. by its Secretary,
Ministry of Health and Family Welfare, Nirman Bhavan,

New Delhi-110 011.
2 The Director General of Health Services
(M.G.Station), Nirman Bhavan New Delhi-110 011.
3 State of A.P. rep. by its Principal Secretary,
Health, Medical, & Family Welfare Dept., Secretariat Building
Hyderabad-500 004.
4 Assistant Commissioner of Customs,
Air Cargo Complex, Begumpet, Hyderabad-016.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the

circumstances stated in the affidavit filed herein the High Court may be pleased to call for the records relating to file No.Z.37011/17/92-MG of the Director General of Health Services, (M.G. Section), New Delhi, and issue a writ of Mandamus or any other writ, order or direction, declaring the action of respondents 1 and 2 i.e., the Union of India and the Director General of Health Services, New Delhi, in not disposing petitioner's application dated 17-7-1992 enclosed to State Government letter dated 7-10-1992 for grant of exemption from the payment of customs duty as being arbitrary and improper and be further pleased to give consequential direction to dispose of the same in accordance with the terms of notification No.64/88-Cus. dated 1-3-1988 and the one time dispensation referred to in F.No.460/86/95-Cus-Min.of Finance, dated 18th December 1995.

Counsel for the Petitioner: M/s. C.KODANDA RAM

Counsel for Respondent Nos.1, 2 & 4: Mr.A.RAJASEKHAR REDDY,

SC FOR CG.

Counsel for Respondent No.3 : G.P.FOR MEDICAL & HEALTH

W.P.No.22735 of 1996

Between:

Share Medical Care, rep. by its Secretary, Manik Arke,
A Society registered under the A.P.Societies Registration Act

Having its Administrative Office at 5-9-22,
Sarovar, Secretariat Road, Hyderabad.

..... PETITIONER

AND

1 Union of India, rep. by its Secretary,
Ministry of Health and Family Welfare, Nirman Bhavan,

New Delhi-110 011.
2 The Director General of Health Services
(M.G.Station), Nirman Bhavan, New Delhi-110 011.
3 The State of A.P. rep. by its Principal Secretary,
Health, Medical, & Family Welfare Dept., Secretariat Buildings,
Hyderabad-500 004.
4 Assistant Commissioner of Customs, Inland Container

Department, Sanathnagar, Hyderabad-500 018.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to call for the records relating the file No.Z37011/17/92-MG of the Director General of Health Services(M.G.Section) and issue a writ of Mandamus or any other writ, order

or direction, declaring the inaction of respondents 1 and 2 i. e ., Union of India, and Director General of Health Services, New Delhi, in issuing an installation certificate in respect of cath lab HICOR equipment imported by petitioner under bill of Lading No.HAMN 6604 dated 22-12-1992 and invoice No.N.B.108976 dated 14-12-1992, as being arbitrary and improper and be further pleased to issue a consequential direction to issue an installation certificate in respect thereof in accordance with the terms of Notification No.64/88-Cus dated 1-3-1988 and the one time dispensation referred to in F.No.460/86/95-Cus. Ministry of Finance dated 18th December 1995.

Counsel for the Petitioner: M/s. C.KODANDARAM

Counsel for Respondent Nos.1, 2 & 4: Mr.A.RAJASEKHAR REDDY,

SC FOR CG

Counsel for Respondent No.3 : G.P.FOR MEDICAL & HEALTH

W.P.No. 3355 of 2001

Between:

Share Medical Care, rep. by its Secretary, Manik Arke,
A Society registered under the A.P.Societies Registration Act,

Having its Administrative Office at 5-9-22,
Sarovar, Secretariat Road, Hyderabad.

..... PETITIONER

AND

1 The Director General of Health Services,
Govt of India, Nirman Bhavan, New Delhi.
2 The Govt of A.P. rep. by its Secretary,
Medical Health & Family Welfare Dept.,

Secretariat , Hyderabad.
3 The Asst. Commissioner of Customs
I.C.D, Sanathnagar, Hyderabad.

.....RESPONDENTS

Counsel for the Petitioner: M/s. C.KODANDARAM

Counsel for Respondent Nos.1 & 3: Mr.A.RAJASEKHAR REDDY,

SC FOR CG

Counsel for Respondent No.2: G.P.FOR MEDICAL, HEALTH &

FAMILY WELFARE

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue an appropriate writ of Mandamus, declaring the impugned order dated 25-1-

2000 as illegal, arbitrary and unjustifiable in the facts and circumstances of the case and consequently direct the 1st respondent to consider the representation dated 14-7-1999 filed by the petitioner and pass appropriate orders in accordance with law.

The Court made the following :

ORDER: (per the Hon'ble Sri Justice M.H.S.Ansari)

The above three writ petitions are by the same petitioner, Share Medical Care. They were heard analogously and are being disposed of by this common order.

W.P.No.22734 of 1996

The instant writ petition has become infructuous as the grievance therein was with regard to non-consideration of the petitioner's application dated 17-7-1992 for grant of exemption and for a consequential direction to consider the said application in terms of Notification No.64/88-Customs, dated 1-3-1988.

W.P.No.22735 of 1996

The grievance in this writ petition is with regard to non-issue of installation certificate in respect of Cath Lab HICOR equipment imported by the petitioner and for a consequential direction to issue installation certificate. This writ petition is also rendered infrctuous in view of the subsequent development namely, the order dated 25-1-2000 whereby the request of the petitioner to categorise the institution under para 3 of the Table to Notification No.64/88-Customs, dated 1-3-1988 was rejected as untenable.

W.P.No.3355 of 2001

The petitioner has, in the instant writ petition, questioned the order dated 25-1-2000 whereby the application of the petitioner to categorise the petitioner's institution under the category para 3 of the Table to the aforesaid Notification No.64/88-Customs, dated 1-3-1988, was rejected.

Briefly stated, the facts in support of the relief prayed for are that the petitioner institution applied in the year 1992 for import of certain items of medical equipment in accordance with Notification No.64/88-Customs, dated 1-3-1988. The State

Government, on the basis of the recommendations of a committee constituted by the Director of Medical Education recommended for issuance of Customs Duty Exemption Certificate (CDEC) to enable the institution to import the equipments mentioned in their application. In its report submitted to the Director General of Health Services, New Delhi, respondent No.1 herein, the Principal Secretary to State Government, categorically stated that the institution has furnished an undertaking to the following effect.

"1. The institution undertakes to render medical attention to all citizens of India without distinction of caste, creed, rank, religion or language.

2. Share Medical Care has got an appropriate programme and have sufficient funds and other resources required for the establishment of super-speciality hospital.

3. Share Medical Care agrees to permit the Central/State Government to depute their representative to inspect the hospital for the purpose of satisfying that the hospital fulfils the conditions mentioned above.

4. We certify that the hospital shall without any distinction of caste, creed, religion or language provide free treatment to all indoor-patients belonging to families with an income of less than Rs.500/- per month and keeping for this purpose at least 10% of beds all reserved for such patients as and when the facilities are made available.

5.We certify that our hospital shall without any distinction of caste, creed, religion or language provide free treatment on an average to at least 40% to all out-door patients belonging to families with an income of less than Rs.500/- per month.

6.Certified that the charges levied on the patients will be reasonable and also depend upon their income and the cost of the equipment.

7. Certified that the equipments, apparatus and appliances to be imported by the institutions will only be used in the institution concerned and will not be removed therefrom for private use and will not be sold or otherwise disposed of without prior permission of the Govt. of India (Ministry of Health & Family Welfare or Directorate General, Health Services).

8.The institution will install the equipment within two months of its import into the country and start functioning within two months."

The Director General of Health Services, New Delhi granted Customs Duty Exemption Certificate (CDEC) as requested. It is not in dispute that the petitioner claimed exemption in respect of import of hospital equipment and was allowed to clear the goods without payment of customs duty on the basis of the CDECs. Subsequently, by an order dated 4-2-1999, CDECs given to the petitioner were cancelled on the ground that it did not satisfy the conditions laid down in the said notification falling under category para 2 of the table. Thereupon, the petitioner filed an application dated 14-7-1999 before first respondent seeking recognition of the hospital as falling under category para 3 of the Table to Notification No.64/88, dated 1-3-1988. It is the case of the petitioner that the medical equipments are all either paid for by the organisation in the USA in foreign exchange or one paid by the petitioner by using the donations/funds received in foreign exchange. The petitioner has FERA registration and all the donations are received through banking channels and thus, the petitioner qualifies for import of equipment free of customs duty in terms of para 3 of the table annexed to the notification. It is the further case of the petitioner that in respect of persons falling under category para 3 of the notification, there is no obligation on the part of such persons to abide by the terms and conditions laid down with reference to paragraphs 2 and 4 of Notification No.64/88-Customs. Mr. Kodandaram, learned counsel for the petitioner, reiterated before the Court the above contentions and also relied upon certain decisions in support of the contention that the impugned order warrants interference on the ground that the petitioner is entitled to a change in the categorisation to category para 3 of the Notification.

The impugned action of the respondents is sought to be sustained on the ground that the CDEC was withdrawn, as information was called for from the petitioner pursuant to the notice issued on 11-6-1997 with a view to see whether the petitioner is fulfilling the conditions of the notification, the information so received was considered, and found that the petitioner is not fulfilling the notificational conditions of free treatment in out-patient and in-patient departments. It is the further case of the respondents that on the basis of the observations of the Supreme Court in **Mediwell Hospital & Health Care Pvt. Ltd. v. Union of India**, all CDEC cases under notification No.64/88 were reviewed. The observations of the Supreme Court referred to in the counter affidavit of respondent No.1 are the following.

"……..the very notification granting exemption must be construed to cast continuing obligation on the part of all those who have obtained the certificate from the appropriate authority and on the basis of that have imported equipments without payment of customs duty to give free treatment at least to 40 per cent of the outdoor patients as well as give free treatment to all the indoor patients belonging to the families with an income of less than Rs.500 per month. The competent authority, therefore, should continue to be vigilant and check whether the undertakings given by the applicants are being duly complied with after getting the benefit of the exemption notification and importing the equipment without payment of customs duty and if on such enquiry the authorities are satisfied that the continuing obligations are not being carried out then it would be fully open to the authority to ask the persons who have availed of the benefit of exemption to pay the duty payable in respect of the equipments which have been imported without payment of customs duty. Needless to mention, the Government has granted exemption from payment of customs duty with the sole object that 40% of all outdoor patients and entire indoor patients of the low income group whose income is less than Rs.500 per month would be able to receive free treatment in the Institute. That objective must be achieved at any cost, and the very authority who have granted such certificate of exemption would ensure that the obligation imposed on the persons availing of the exemption notification are being duly carried out and on being satisfied that the said obligations have not been discharged they can enforce realisation of the customs duty from them."

There is no dispute that the petitioner having failed to comply with the notificational conditions, CDECs issued to it were withdrawn by order dated 4-2-1999. This action of respondent No.1, is not under challenge in these proceedings.

As regards the grounds taken by the petitioner, assailing the impugned order of rejection of the application of the petitioner for consideration of their case under para 3 of the table, it is the case of the respondent authority that the petitioner applied for CDEC as institution under project stage under establishment and CDEC was issued to them under category 4 institution with an undertaking that would be relatable to category 2 institution fulfilling the conditions specified therein. As, admittedly, the petitioner did not fulfil the conditions relatable to category 2 institution, their claim for conversion of categorisation under category 3 is untenable.

Learned Standing Counsel for Central Government sought to sustain the impugned orders on the ground that the petitioner having applied for and obtained exemption on the basis of the undertaking furnished by it as to the compliance with the conditions applicable to the institution in category para 2 of the Notification cannot be allowed to seek change after having failed to fulfil those obligations. Reliance was also placed upon Section 111(c) of the Customs Act, the relevant portion of which reads as under.

"Confiscation of improperly imported goods etc.:- The following goods

brought from a place outside India shall be liable to confiscation –

(c) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer."

Relying upon the un-reported judgment in a batch of writ petitions filed before the High Court of Karnataka in W.P.No.28186 of 1996 and batch, learned Standing Counsel contended, as held in that case, that if the conditions subject to which the imported goods are exempt from duty are not satisfied, the goods are liable to be confiscated besides entitling the respondents to recover the amount of duty payable.

From the narration of the facts, as above, it is evident that the petitioner was granted CDEC under para 4 of the table of Notification No.64/88 as it was in the process of being established. The petitioner furnished an undertaking to fulfil the conditions as applicable to category 2 and on that basis the State Government recommended the grant of CDEC to import the equipments. The undertaking of the petitioner to comply with the conditions applicable to category para 3 of the Notification have been extracted in the letter of the State Government. The only question for consideration in this writ petition is whether the petitioner can be allowed to change the categorisation after having failed to fulfil the conditions stipulated with respect to category 2 institution in respect whereof CDECs were granted.

I n **Mediwell Hospital** case (supra), the notification in question was considered and it was held that no importer can claim absolute exemption from payment of customs duty as of a right. The normal rule is that every import attracts duty under the Customs Tariff Act unless otherwise exempted by a notification issued by the Central Government in exercise of power under Section 25 of the Customs Act and the person claiming exemption should establish that the pre-conditions prescribed under the notification are fully satisfied. The Notification No.64/88-Customs has been issued in exercise of the power under Section 25 of the Customs Act. We have already extracted the relevant observations of the Supreme Court with regard to the obligations imposed on the persons availing of the exemption and the duty on the part of the authority granting exemption to see that the obligations are being duly carried out.

The conditions based on which CDECs were granted became part of the exemption order. Failure to discharge the obligations undertaken by the petitioner at the time of import of the goods has to be construed as non-compliance of the obligations under which exemption was granted, and the goods in question are liable to be confiscated in terms of Section 111(c) of the Customs Act. The petitioner cannot, in our view, on its failure to discharge the obligations undertaken by it at the time of import of the goods, be allowed to turn around and claim that it has no such obligations to discharge or that its case is required to be considered under any other category. This is for the reason that the petitioner availed of the exemption pursuant to the specific undertaking given by it to satisfy the obligations prescribed for category para 2 of the Notification. Therefore, it is not open to the petitioner to seek alteration of those conditions on the plea now being advanced that its case falls under category para 3. We find no substance in the submission of the petitioner that it is entitled to consideration under a different category and that the respondents are bound to consider its case in category para 3 of the notification after the date of import. The case on hand is not one of illegal taxation nor it is a case of a statutory exemption or deduction to which a citizen is entitled to in law. Therefore, those line of cases relied upon by Mr. C.Kodandaram, learned counsel for the petitioner have no application to the case on hand. They have been noted hereunder only for the sake of rejection.

Amalgamated Coalfields Ltd. v. Janapada Sabha

-AIR 1961 SC 964.

State of Bombay v. United Motors -1953 SCR 1069

Chokshi Metal Refinery v. C.I.T. - (1977) 107 ITR 63 (Guj.)

Associated Cement Companies Ltd. v. State of Bihar

- **137 STC 389.**

As already noticed, in **Mediwell Hospital** case (supra), it was held that no importer can claim absolute exemption from payment of customs duty as of right. The person claiming exemption should establish that the conditions prescribed subject to which the exemption was granted are fully satisfied.

In the result, W.P.Nos.22734 and 22735 of 1996 are dismissed as infructuous. W.P.No.3355 of 2001 is dismissed upholding the impugned orders. There shall be

no order as to costs.

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(M.H.S.ANSARI, J.)

December 2004.

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(T.Ch.SURYA RAO, J.)

ARS

To

1. Union of India, rep. by its Secretary, Ministry of Health and Family Welfare, Nirman Bhavan,New Delhi-110 011.
2.The Director General of Health Services M.G.Station), Nirman Bhavan,

New Delhi-110 011.
3. The Principal Secretary, Govt.of A.P., Health, Medical, & Family Welfare Dept., Secretariat Building,Hyderabad-500 004.
4. The Assistant Commissioner of Customs, Air Cargo Complex, Begumpet, Hyderabad-016.

5. The Assistant Commissioner of Customs, Inland Container Department, Sanathnagar, Hyderabad-500 018.

6. Two C.Cs. to Govt. Pleader for Medical & Health, High Court Bldgs., Hyderabad (OUT).

7. Two C.D. copies.